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January 4, 2005

Via Electronic Comment Filing System

Mr. Jeffrey J. Carlisle
Chief
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Request for Review of
Suspension of High Cost
Universal Service Support Payments

Dear Mr. Carlisle:

Cass County Telephone Company, LLC ("Cass County"), by its attorneys and pursuant to Sections 54.719(c) and 54.720(a) of the Commission's rules, 47 C.F.R. §§ 54.719(c) and 54.720(a), hereby requests review of the November 5, 2004 decision by the Universal Service Administrative Company ("USAC") suspending high cost support payments to Cass County (the "Suspension Decision").¹

Background

On October 15, 2004, the Wireline Competition Bureau (the "Bureau") directed USAC "to suspend all monthly support payments (including Lifeline, high-cost loop, interstate common line, local switching and any safety net additive)" to Cass County, effective immediately (the "Suspension Directive").² On October 22, 2004, the Bureau modified the Suspension Directive

¹ Letter from Irene M. Flannery, Vice President – High Cost & Low Income Division, USAC, to Mr. Kenneth Matzdorff, Chairman, Cass County Telephone Company, November 5, 2004 (copy attached hereto as Exhibit 1).

² Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, to Ms. Irene Flannery, Vice President, High Cost & Low Income Division, USAC, October 15, 2004 (copy attached hereto as Exhibit 2).



to permit USAC to continue to disburse monthly support payments to Cass County for the Lifeline program.³

The Suspension Decision was not an independent decision by USAC. Rather, USAC simply informed Cass County of USAC's receipt of the Suspension Directive from the Bureau, and quoted or paraphrased the Suspension Directive, which stated:

On September 30, 2004, the Missouri Public Service Commission (Missouri Commission) declined to certify that Cass County ... [is] using [its] high-cost universal service support in accordance with Section 254(e) of the Telecommunications Act of 1996. The Missouri Commission noted that it is currently conducting an investigation of [Cass County's] use of universal service support and is awaiting the receipt of a third-party audit.... Based on the information available to us at this time, we are unable to determine if the high cost ... support payments to Cass County ... are being used in accordance with the statute and Federal Communications Commission rules.

Suspension Directive at 1 (citing Letter from Robert M. Clayton, III, Commissioner, Missouri Public Service Commission, to Marlene H. Dortch, Office of the Secretary, Federal Communications Commission (copy attached hereto as Exhibit 4)). USAC stated that "[u]ntil this issue has been resolved ... USAC will withhold all high cost support payments to Cass County...." Suspension Decision at 1; *see* Suspension Directive at 1.

The Lack of State Certification for 2005 Cannot Affect
Support Payments for the Fourth Quarter of 2004

The relationship between State certification of eligibility for high cost support payments, on the one hand, and payment of such support, on the other hand, is forward looking; that is, a State's failure or refusal to certify eligibility by the prescribed deadline affects whether that carrier will receive support for a future period after the deadline. This relationship is beyond dispute. The Commission's rules are clear:

States that desire rural incumbent local exchange carriers ... to receive support pursuant to []§ 54.301 ... and/or part 36, subpart F of this chapter must file an annual certification with the Administrator and the Commission stating that all federal high-cost support provided to such carriers within that State **will be used** only for the provision, maintenance, and upgrading of facilities and services for which the

³ Letter from Jeffrey J. Carlisle, Chief, Wireline Competition Bureau, to Ms. Irene Flannery, Vice President, High Cost & Low Income Division, USAC, October 22, 2004 (copy attached hereto as Exhibit 3).

support is intended. Support ... shall only be provided to the extent that the State has filed the requisite certification pursuant to this section.

47 C.F.R. § 54.314(a) (emphasis added). The same rule provides that “[c]arriers for which certifications are filed [by a State] on or before October 1 shall receive support pursuant to []§ 54.301 ... in the first, second, third, and fourth quarters of the succeeding year.” 47 C.F.R. § 54.314(d)(1). *See also* 47 C.F.R. § 54.314(d)(2)-(4). Thus, a State may file a certification that will determine eligibility for payment for one year, or for one, two, or three quarters – in all events *after* the certification covering that period has been filed. *See* 47 C.F.R. § 54.314(d)(1)-(4).

Pursuant to Section 54.314, the Missouri Public Service Commission (the “MoPSC”) certified Cass County’s eligibility for high-cost support payments for calendar year 2004 on September 25, 2003. *See Exhibit 4*. Consequently, the September 30, 2004, letter from the MoPSC, which “decline[d] to certify that ... Cass County ... [is] using [its] high cost support in accordance with Section 254(e) of the Telecommunications Act of 1996,” may only be read to have future effect, for calendar year 2005.⁴ Nonetheless, “USAC initiated the suspension of high cost support payments with the September 2004 payments that were disbursed at the end of October 2004.” Suspension Decision at 1. Thus, contrary to the Commission’s rules, the Bureau and USAC have relied on the MoPSC’s letter as the basis for denying high-cost support for portions of 2004 that are not covered by the certification for 2005. The Bureau must reverse this decision and promptly direct USAC to provide support payments for the period of 2004 for which such payments have been withheld.

The MoPSC’s Letter Should Not Preclude
Cass County from Receiving Support Payments for 2005

The Bureau also must reconsider the suspension of support payments for 2005. The suspension is based solely on the MoPSC’s September 30, 2004 letter. That letter does nothing more than report that the MoPSC “is conducting further inquiry ... and awaiting the receipt of a third party audit.” *Exhibit 5*.

There is no basis for the MoPSC’s decision not to issue, as of October 1, 2004, the certification for 2005. The MoPSC has in place procedures for carriers to demonstrate that they are eligible for high-cost support.⁵ Cass County submitted the information requested by the MoPSC and otherwise complied with the MoPSC’s certification procedures. Yet the MoPSC

⁴ Of course, should the State issue a certification on or before July 1, 2005, Cass County would be eligible for support for some portion of the year. 47 C.F.R. § 54.314(d)(2)-(5).

⁵ In July 2002, the MoPSC adopted procedures that governed certification for calendar years 2002, 2003, and 2004. In the Matter of the Investigation into Certification for Federal Universal Service Funds, Case No. TO-2002-347, Order Establishing Certification Procedures, July 9, 2002. Those procedures were modified in April 2004 and, as modified, govern certification for calendar year 2005.



failed to certify only Cass County and one other carrier, without offering any findings or justification for singling them out for disparate treatment. The MoPSC has not alleged that Cass County will not use high cost support for its intended purposes; indeed, the MoPSC has not made any findings or decisions regarding Cass County's use of support for 2005. The MoPSC thus has offered no justification for failing to certify Cass County.

The termination of payments to an eligible recipient "pending resolution of a controversy"⁶ deprives Cass County of resources needed to provide critical telecommunications services and violates Cass County's procedural and substantive due process rights. Procedural due process requirements may be satisfied if a party has been afforded notice and a hearing, and a written explanation for its denial of benefits.⁷ Cass County has received none of these basic protections. Because the "Fourteenth Amendment places procedural constraints on the actions of government that work a deprivation of interests enjoying the stature of 'property' within the meaning of the Due Process Clause"⁸ of the Constitution,⁹ the support payments relied upon by Cass County to provide high cost telecommunications services¹⁰ must be reinstated unless and until the MoPSC, USAC and the Commission provide the protections to which Cass County is entitled.

Further, the suspension of high-cost support while continuing Lifeline support is arbitrary and capricious. The Bureau, unilaterally rescinded its direction to USAC to suspend low income support to Cass County, in recognition of the potential for immediate harm to customers. But the Bureau and USAC did not consider the impact of the suspension of high income support on Cass County's ability to continue to provide service to other customers who rely on Cass County to provide basic local exchange service.

Finally, the MoPSC's letter on its face is inconsistent with this Commission's rules regarding certifications. As noted, the rules require a State to certify that all federal high-cost support provided to a carrier "will be used" only for specified purposes. 47 C.F.R. § 54.314(a). In its letter, however, the MoPSC referred to its ongoing inquiry into Cass County's *current* use of such support. See Exhibit 5. The MoPSC did not certify that Cass County "will not" make required use of support payments. The State has failed to explain its deviation from the rules,

⁶ *Goldberg v. Kelly*, 397 U.S. 254, 264 (1970).

⁷ See *Natale v. Town of Ridgefield*, 170 F.3d 258, 263 (2d Cir. 1999).

⁸ *Memphis Light, Gas & Water Div. v. Craft*, 436 U.S. 1, 9 (1978).

⁹ U.S.C.A. Const. Amends. 5, 14.

¹⁰ Cass County receives high-cost support in connection with its provision of telecommunications service to approximately 8,000 customers in rural areas of Cass County, Missouri. Cass County's provision of universal service is costly, and support from the federal Universal Service Fund is crucial to the maintenance and upgrading of the facilities needed to serve customers in these high cost areas; in the absence of such support, Cass County cannot afford to continue to provide telecommunications services indefinitely.



which has effectively caused Cass County the loss of support critical to its ability to continue to provide needed services to its rural customers.

Relief Requested

Based on the foregoing, Cass County respectfully requests that the Bureau reconsider its direction to USAC to suspend Cass County's high-cost monthly support payments and USAC's implementation of that directive, and to immediately instruct USAC to distribute the withheld payments for September, October, November, and December 2004 and to commence monthly support payments for 2005.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E. Ashton Johnston", with a long horizontal flourish extending to the right.

E. Ashton Johnston
Counsel for Cass County
Telephone Company LLC

Attachments

cc (via electronic mail):

Ms. Narda Jones, FCC
Ms. Gina Spade, FCC
Mr. Thomas Buckley
Ms. Irene M. Flannery, USAC
Mr. Wess Henderson, Missouri Public Service Commission

Exhibit 1



Universal Service Administrative Company

Irene M. Flannery
Vice President – High Cost & Low Income Division
iflannery@universalservice.org

November 5, 2004

Mr. Kenneth Matzdorff
Chairman
Cass County Telephone Company
192 W. Broadway
P.O. Box 398
Peculiar, MO 64078

RE: Suspension of High Cost universal service support payments

Dear Mr. Matzdorff:

On October 15, 2004, the Universal Service Administrative Company (USAC), the administrator of the universal service support mechanisms, received a letter from the Federal Communications Commission (FCC) directing USAC to suspend all high cost support payments to Cass County Telephone Company until further notice. In the letter, the FCC stated that it was unable to determine whether the high cost support payments to Cass County Telephone Company are being used in accordance with the FCC's rules and statutes.

Until this issue has been resolved, therefore, USAC will withhold all high cost support payments to Cass County Telephone Company. USAC initiated the suspension of high cost support payments with the September 2004 payments that were disbursed at the end of October 2004.

As is the case with any administrative decision made by the FCC or USAC, you have the right to appeal this decision. You may appeal to USAC or the FCC, and the appeal must be filed within 60 days of the issuance of the decision from USAC. The date on this letter, therefore, begins the 60-day window within which you may file an appeal. Your appeal must be **postmarked** within 60 days of this letter. Pursuant to FCC rules, failure to meet this requirement will result in automatic dismissal of your appeal. I recommend that you consult sections 54.719 through 54.725 (47 C.F.R. §§ 54.719 to 54.725) of the FCC's rules for the details associated with filing an appeal, but I will also provide you with some of the logistics of that process in the following paragraphs.

Should you decide the appeal to USAC, you should direct the appeal to:

Universal Service Administrative Company
2000 L Street, NW – Suite 200
Washington, DC 20036
Attention: High Cost & Low Income Division – Appeals

Should you decide to appeal to the FCC, the method of your filing will determine where you should direct your appeal. If you are submitting your appeal via the United States Postal Service, you should direct the appeal to:

Federal Communications Commission
Office of the Secretary
445-12th Street, SW
Room TW-A325
Washington, DC 20554

Documents sent by Federal Express or any other express mail should use the following address:

Federal Communications Commission
Office of the Secretary
9300 East Hampton Drive
Capitol Heights, MD 20743
(8:00A.M. – 5:30 P.M.ET)

For hand-delivered or messenger-delivered items, please use the following address:

Federal Communications Commission
Office of the Secretary
236 Massachusetts Avenue, NE, Suite 110
Washington, DC 20002
(8:00A.M. – 7:00 P.M.)

For security purposes, hand-delivered or messenger-delivered documents will not be accepted if they are enclosed in an envelope. Any envelopes must be disposed of before entering the building. Hand deliveries must be held together with rubber bands or fasteners.

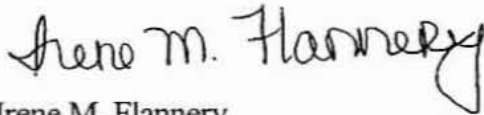
Appeals may also be submitted to the FCC electronically, either by the Electronics Comment Filing System (ECFS) or by fax. The FCC recommends filing with the ECFS to ensure timely filing. Instructions for using ECFS can be found on the ECFS page of the FCC web site (www.fcc.gov). Appeals to the FCC filed by fax must be faxed to 202-418-0187. Electronic appeals will be considered filed on a business day if they are

received at any time before 12:00 A.M. (midnight), Eastern Standard Time. Fax transmissions will be considered filed on a business day if the complete transmission is received at any time before 12:00 A.M.

Please be sure to refer to CC Docket No. 96-45 on all communications with the FCC. The appeal transmission must also provide your company's name and study area code, plus necessary contact information, including name, address, telephone number, fax number, and e-mail address of the person filing the appeal. Unless the appeal is by ECFS, please include a copy of the letter being appealed.

Please contact me if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Irene M. Flannery".

Irene M. Flannery
Vice President – High Cost & Low Income Division
IMF:EP:

cc: Robert Osborn, Cass County Telephone Company
E. Ashton Johnston, Counsel for Cass County Telephone Company
Jeffrey Carlisle, FCC
Narda Jones, FCC
Gina Spade, FCC
Thomas Buckley, FCC
Karen Majcher, USAC

Exhibit 2



Federal Communications Commission
Washington, D.C. 20554

October 15, 2004

Ms. Irene Flannery
Vice President, High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street NW, Suite 200
Washington, DC 20036

Dear Ms. Flannery:

On September 30, 2004, the Missouri Public Service Commission (Missouri Commission) declined to certify that Cass County Telephone Company (Cass County Telephone) and New Florence Telephone Company (New Florence Telephone) are using their high-cost universal service support in accordance with Section 254(e) of the Telecommunications Act of 1996. The Missouri Commission noted that it is currently conducting an investigation of both of these companies' use of universal service support and is awaiting the receipt of a third-party audit. See attached letter from Robert M. Clayton, III, Commissioner, Missouri Public Service Commission, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated Sept. 30, 2004.

Based on the information available to us at this time, we are unable to determine if the high-cost and low-income support payments to Cass County Telephone and New Florence Telephone are being used in accordance with the statute and Federal Communication Commission rules. Until this issue is resolved, we direct USAC to suspend all monthly support payments (including Lifeline, high-cost loop, interstate common line, local switching and any safety net additive) to Cass County Telephone and New Florence Telephone immediately. Please inform Cass County Telephone and New Florence Telephone of this suspension and of their rights to challenge the suspension before the Commission.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Gina Spade or Tom Buckley at 202-418-7400.

Sincerely,

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

cc: Kenneth Matzdorff, Chairman, Cass County Telephone Company and
Chairman, New Florence Telephone Company
Robert Osborn, Cass County Telephone Company
E. Ashton Johnston, Counsel for Cass County Telephone Company
William England, Counsel for New Florence Telephone Company
Susan Duffy, Executive Director, Kansas Corporation Commission
Sandy Reams, Kansas Corporation Commission
Robert Quinn, Executive Director, Missouri Public Service Commission
Wess Henderson, Director, Utility Operations Division, Missouri Public Service Commission

September 30, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

RE: USF Certification Pursuant to 47 USC 254(e)
CC Docket No. 96-45

Dear Ms. Dortch:

At this time, the Missouri Public Service Commission (MoPSC) hereby **declines** to certify that rural carriers, Cass County Telephone Company and New Florence Telephone Company, are using their high cost support in accordance with Section 254(e) of the Telecommunications Act of 1996 (47 USC § 254(e) 1996). The MoPSC is conducting further inquiry of these companies and awaiting the receipt of a third party audit. Should the additional inquiry indicate the companies are using the funds in accordance with Section 254(e), the MoPSC will submit its certification letter at that time.

Sincerely,

Robert M. Clayton, III
Commissioner

RMC/nd

cc: Irene Flannery
Universal Service Administrative Company
2120 L Street, NW-Suite 600
Washington, DC 20037

Exhibit 3



Federal Communications Commission
Washington, D.C. 20554

October 22, 2004

Ms. Irene Flannery
Vice President, High Cost and Low Income Division
Universal Service Administrative Company
2000 L Street NW, Suite 200
Washington, DC 20036

Dear Ms. Flannery:

On October 15, 2004, the Wireline Competition Bureau directed USCA to suspend all monthly support payments (including Lifeline, high-cost loop, interstate common line, local switching and any safety net additive) to Cass County Telephone Company and New Florence Telephone Company (the Companies) immediately. At this time, we believe that USAC should continue to disburse monthly support payments to the Companies for the Lifeline program. As we directed before, USAC should suspend all monthly support payments for the high-cost mechanisms.

Thank you for your cooperation in this matter. If you have any questions, please feel free to contact Gina Spade or Tom Buckley at 202-418-7400.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeffrey J. Carlisle", is written over a large, stylized, and somewhat illegible signature that appears to be "Jeffrey J. Carlisle".

Jeffrey J. Carlisle
Chief, Wireline Competition Bureau

cc: Kenneth Matzdorff, Chairman, Cass County Telephone Company and
Chairman, New Florence Telephone Company
Robert Osborn, Cass County Telephone Company
E. Ashton Johnston, Counsel for Cass County Telephone Company
William England, Counsel for New Florence Telephone Company
Susan Duffy, Executive Director, Kansas Corporation Commission
Sandy Reams, Kansas Corporation Commission
Robert Quinn, Executive Director, Missouri Public Service Commission
Wess Henderson, Director, Utility Operations Division, Missouri Public Service Commission

Exhibit 4



Commissioners
KELVIN L. SIMMONS
Chair
CONNIE MURRAY
STEVE GAW
BRYAN FORBIS
ROBERT M. CLAYTON III

Missouri Public Service Commission

POST OFFICE BOX 360
JEFFERSON CITY, MISSOURI 65102
573-751-3234
573-751-1847 (Fax Number)
<http://www.psc.mo.gov>

September 25, 2003

ROBERT J. QUINN, JR.
Executive Director
WESS A. HENDERSON
Director, Utility Operations
ROBERT SCHALLENBERG
Director, Utility Services
DONNA M. PRENGER
Director, Administration
DALE HARDY ROBERTS
Secretary/Chief Regulatory Law Judge
DANA K. JOYCE
General Counsel

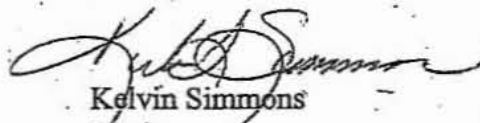
Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

RE: USF Certification Pursuant to 47 USC 254(e)
CC Docket No. 96-45

Dear Ms. Dortch:

The Missouri Public Service Commission hereby certifies that all rural carriers listed in the attached have certified to this Commission that they will use the funds received from the federal high cost support funding mechanism in accordance with Section 254(e) of the Telecommunications Act of 1996 (47 USC § 254(e) 1996).

Sincerely,


Kelvin Simmons
Chair

Enclosure (1)

KS/nd

cc: Irene Flannery
Universal Service Administrative Company
2120 L Street, NW-Suite 600
Washington, DC 20037

ALLTEL Missouri, Inc.
Alma Telephone Company
BPS Telephone Company
Cass County Telephone Company
CenturyTel of Missouri, LLC (SAC 429785) - formerly GTE Midwest Incorporated
d/b/a Verizon Midwest formerly Contel of Eastern Missouri SAC 421789)
CenturyTel of Missouri, LLC (SAC 429786) - formerly GTE Midwest Incorporated
d/b/a Verizon Midwest formerly Contel Systems (SAC 4211846)
CenturyTel of Northwest Arkansas, LLC - SAC 401142 and 401143
Chariton Valley Telephone Corporation
Choctaw Telephone Company
Citizen's Telephone Company
Craw-Kan Telephone Cooperative Inc.
Ellington Telephone Company
Farber Telephone Company
Fidelity Communications Services I, Inc.
Fidelity Telephone Company
Goodman Telephone Company
Granby Telephone Company
Grand River Mutual Telephone Corporation
Green Hills Telephone Corporation
Green Hills Cellular d/b/a Green Hills Telecommunications
Holway Telephone Company
Iamo Telephone Company
Kingdom Telephone Company
KLM Telephone Company
Lathrop Telephone Company
Le-Ru Telephone Company
Mark Twain Communications Company
Mark Twain Rural Telephone Company
McDonald County Telephone Company
Mid-Missouri Telephone Company
Miller Telephone Company
Mokan Dial
New Florence Telephone Company
New London Telephone Company
Northeast Missouri Rural Telephone Company/Modern Telecommunications
Company
Orchard Farm Telephone Company
Oregon Farmers Mutual Telephone Company
Ozark Telephone Company
Peace Valley Telephone Company, Inc.
Rock Port Telephone Company
Seneca Telephone Company
Spectra Communications Group, LLC d/b/a CenturyTel - SAC 421151
Sprint of Missouri, Inc.
Steelville Telephone Exchange, Inc.
Stoutland Telephone Company

Exhibit 5

September 30, 2004

Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445-12th Street, SW
Washington, DC 20554

RE: USF Certification Pursuant to 47 USC 254(e)
CC Docket No. 96-45

Dear Ms. Dortch:

At this time, the Missouri Public Service Commission (MoPSC) hereby **declines** to certify that rural carriers, Cass County Telephone Company and New Florence Telephone Company, are using their high cost support in accordance with Section 254(e) of the Telecommunications Act of 1996 (47 USC § 254(e) 1996). The MoPSC is conducting further inquiry of these companies and awaiting the receipt of a third party audit. Should the additional inquiry indicate the companies are using the funds in accordance with Section 254(e), the MoPSC will submit its certification letter at that time.

Sincerely,

Robert M. Clayton, III
Commissioner

RMC/nd

cc: Irene Flannery
Universal Service Administrative Company
2120 L Street, NW-Suite 600
Washington, DC 20037